IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL.

Writ Petition no. 242 (S/B) of 2002

Devi dutt ----------Petitioner

Versus

Managing Director, U.P.S.C.F and others ……...Respondents

Hon'ble Irshad Hussain J
Hon'ble M.M.Ghildiyal J

(DELIVERRED BY HON'BLE M. M. GHILDIYAL J)

By means of this writ petition, the petitioner has challenged the order-dated 24.12.2001 passed by respondent no.1 whereby the petitioner was retired from service with effect from 31.12.2001 after attaining age of superannuation.

Heard learned counsel for the petitioner Sri Udyog Shukla and Sri Ashish Joshi learned counsel for the respondents.

The petitioner has contended that he was appointed on the post of Sahayogi with the respondents on 1.8.1996. At the time of appointment the eligibility for the post was to be literate and to know the use of cycle. At the time of appointment the petitioner alongwith literacy certificate mentioned his date of birth as 25.4.1997. On 26.09.2001 the petitioner received a letter from General Manager, administration, that there is a difference in the date of birth of the petitioner recorded in various documents such as in the seniority list of 1973 and 1990 it is recorded as 2.12.1941 whereas in the provident fund account of the petitioner it is recorded as 20.4.1945 and the petitioner was directed to clarify which of the date is the correct date of birth of the petitioner.

On 6.10.2001 the petitioner submitted reply that at the time of appointment alongwith literacy certificate he has submitted his date of birth as 25.4.1947. He has passed Pramthma examination from the

Hindi Sahataya Samelan, Allahabad and in the certificate issued for such examination the date of birth of the petitioner is recorded as 25.4.1947. In the service book the date of birth of the petitioner is recorded as 15.8.1947. On 13.10.2001 the G.M. Administration further sought clarification from the petitioner to explain as to which of the date of birth is correct because in the service book it is recorded as 15.8.1947 whereas in the certificate of Prathama examination it is recorded as 25.4.1947. The petitioner also submitted the school-leaving certificate issued by the Prathmik Pathashala village Musabanger Kotabgh Kaladungi on which the petitioner's date of birth was mentioned as 25.4.1947. However, ignoring the service book and the school leaning certificate the respondent no.1 on 22.12.2001 directed the petitioner to be retired from service with effect from 31.12.2001 treating the date of birth of the petitioner as 2.12.1941. This is the order impugned in the writ petition.

The learned counsel for the petitioner has submitted that as in the service book of the petitioner the date of birth is recorded as 15.8.1947 whereas in the certificate of Prathama examination the date of birth is recorded as 25.04.1947. Similarly in the school-leaving certificate submitted by the petitioner the date of birth of the petitioner as 25.4.1947 and the respondents were not correct to retire the petitioner with effect from 31.12.2001. He has further submitted that under the Uttar Pradesh Recruitment to Service (Determination of date of Birth) Rules, the date of birth of any government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the government service or where a government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation of his service including eligibility for promotion, superannuation, premature, retirement or retrial benefits and no

application or representation shall be entertained for correction of such date of age in any circumstances whatsoever.

Learned Counsel for the petitioner has placed reliance on the judgement in the case of **Commissioner of Police, Bombay and another Versus Bhagwan V.Lahane reported in 1996 (SC 2)-G J-X 1909-Supreme Court and Wasi Ullah Saddiqi Versus State of U.P and others, reported in (1992) 1 U.P.L.B.E.C. page 69.** The facts of the case are quite different to the authority cited above and the petitioner cannot claim benefit of the aforesaid citation.

The respondents have filed counter affidavit. In the counter affidavit the respondents have taken stand that the petitioner was appointed in the year 1966 with the respondents as Sahayogi. Since different date of birth were mentioned in the service book, in the seniority list, in the provident fund account of the petitioner as well as in school leaning certificate and Prathama examination certificate which were submitted by the petitioner after issuing notice to him. It is submitted by the learned counsel for the respondents that the P.C.F. Karamchari Sewa Niyamawali came into force in the year 1980. The service book of the employees of the federation were prepared later on. The service book of the petitioner was prepared on 2.4.1995 Since there were different date of birth in various documents the respondents sought clarification from the Basic Shiksha Adhikari, Nainital about the correct date of birth of the petitioner from the record of Prathmik Pathashala, Musabanger district Nainital who by letter dated 28.2.2002 has submitted the copy of leaving certificate of the petitioner. From the aforesaid certificate it is clear that the petitioner got admission on 1.2.1955 in Prathmik Vidayaalaya Nauda district Nainital and while he was studying in class IV he got admission on 7.3.1957 in the Prathmik Vidayala Musabanger district Nainital. The date of birth of the petitioner recorded in the Prathmik Vidyala Nauda district Nainital as 2.12.1941. The Basic Shiksha Adhikari has further certified that in the leaving certificate submitted by the petitioner the date of birth recorded as 25.4.1947 in not correct. Thus from the certificate submitted by the Basic Shiksha Adhikari it is

clear that the petitioner has manipulated in recording wrong date of birth in the leaving certificate and on the basis of this wrong date of birth he was successful in recording the date o birth in the service book as 15.8.1947.

Thus it is clear that the actual date of birth of the petitioner is 2.12.1941 and afar attaining the age of superannation he was liable to be retired with effect from 31.12.2001. The petitioner has challenged his retirement on the ground that in the service book and in the Prathama examination the date of birth of the petitioner recorded is correct. The submission has no force because the petitioner has managed in recording the wrong date of birth in the service book as well as in the Prathama examination certificate on the basis of school leaving certificate in which he has manipulated in recording wrong date of birth. The manipulation in the date of birth by the petitioner is proved from the certificate issued by the Basic Shiksha Adhikari in the enquiry.

For the reasons recorded above the writ petition is dismissed. No order as to costs.

September 23, 2003
MPS

(Irshad Hussain J) **(M.M.Ghildiyal J)**